

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHELLEY JOHNSON,)	
)	CASE NO. 4:17CV1894
Plaintiff,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
WAL-MART STORES EAST, INC.,)	
)	
Defendant.)	<u>ORDER</u>

Having reviewed the parties submissions related to Defendant's Motion to Dismiss (ECF No. 17), the Court is contemplating whether to certify a question to the Ohio Supreme Court related to Count III of Plaintiff's Complaint.

In a prior decision from this District, Judge O'Malley indicated an intent to certify the issue of whether a person must be engaged in commercial activity to bring a claim under Ohio's Deceptive Trade Practices Act, [R.C. § 4165.02](#), *et seq.* [McKinney v. Bayer Corp.](#), 744 F.Supp.2d 733, 752 (N.D.Ohio 2010) (O'Malley, J.). Judge O'Malley did not certify the issue to the Ohio Supreme Court, however, because the plaintiff filed a notice of dismissal on the ODTPA claim prior to certification. [10-cv-224 at ECF No. 33](#). As of this date, the Ohio Supreme Court has not resolved this question, and parties' briefing fails to show the critical inquiry for any district court addressing an issue of state law: how would the highest court in that state resolve the issue.

(4:17CV1894)

Accordingly, the parties are ordered to submit a joint report as to how they would suggest the Court proceed on this issue. The parties must submit this report within seven days of this Order.

IT IS SO ORDERED.

January 26, 2018
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge